

than one year to apply for and obtain a visa to travel to this country. Bhadelia cannot claim that he was deprived of a jury trial when he made no effort to obtain a visa to come to this country to attend his trial and evidentiary hearings.

Contrary to Bhadelia's arguments, he was not denied due process nor was he penalized by his "alleged" inability to travel to this country. The district court gave Bhadelia an opportunity to be heard and to present evidence and legal arguments at an evidentiary hearing after his agent settled the instant case at mediation. The record established that Bhadelia only acted through his agents whom he authorized to conduct his business affairs. After his authorized agent agreed to settle the instant case at a court ordered mediation, Bhadelia repudiated the settlement, but made no effort to come to this country and appear before the district court in accordance with its order. Although Bhadelia invoked the jurisdiction of the district court, he refused to comply with its rules and orders. Bhadelia was not denied due process; rather, he chose not to exercise his right to appear before the district court.

II. THE LOWER COURTS DID NOT ERR IN DECIDING THIS CASE

The district court properly retained jurisdiction and reopened this case upon Marina Club's timely motions as demonstrated by the record. However, even though the district court's August 27, 2004 administrative order of dismissal did not incorporate the mediation settlement agreement, there is an independent basis for federal jurisdiction in the instant case. If there is an independent

basis for federal court jurisdiction, a federal court may enforce a settlement agreement even after the case has been dismissed. *Kokkonen, Id.* at 382. Bhadelia is a citizen of Pakistan and Marina Club is a Florida corporation whose office and headquarters are located in Tampa, Florida. Because the amount in controversy exceeded \$75,000, the district court had diversity jurisdiction to enforce the settlement agreement under 28 U.S.C. § 1332(a).

Although Bhadelia's brother, Mohammed Farooq Bhadelia, a resident of Florida, was joined as a co-plaintiff, his joinder does not defeat diversity jurisdiction. Mohammed Farooq Bhadelia was not the real party in interest in this action. He did not purchase the condominium property from the RTC, nor did he subsequently acquire an ownership interest. Rather, the property was continuously owned by the real party in interest, Bhadelia and Mohammed Farooq Bhadelia was nothing more than his brother's agent. If a non-diverse plaintiff is not the real party in interest, his presence in the case may be ignored in determining diversity jurisdiction. *Navarro Savings Association v. Lee*, 446 U.S. 458, 461 (1980). Consequently, the district court had an independent basis for federal court jurisdiction under 28 U.S.C. § 1332 to enforce the settlement agreement because the parties were diverse.

CONCLUSION

For all of the foregoing reasons, Respondent, Marina Club respectfully requests that this Honorable Court denies Petitioner Bhadelia's Petition. —

Respectfully submitted,

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***THIS DOCUMENT REFLECTS CHANGES
RECEIVED THROUGH OCTOBER 15, 2005***

Annotations current through September 23, 2005

Rules of The United States District Court for The
Middle District of **Florida** Chapter THREE. MOTIONS,
DISCOVERY AND PRETRIAL PROCEEDINGS

USDC M.D. Fla. Local Rule 3.08 (2005)

Review Court Orders which may amend this Rule.

Rule 3.08. Notice of Settlements; Dismissal

(a) It shall be the duty of all counsel to immediately notify the Court upon the settlement of any case.

(b) When notified that a case has been settled and for purposes of administratively closing the file, the Court may order that a case be dismissed subject to the right of any party to move the Court within sixty (60) days thereafter (or within such other period of time as the Court may specify) for the purpose of entering a stipulated form of final order or judgment; or, on good cause shown, to reopen the case for further proceedings.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

MOHAMMED HUSEIN BHADDELIA,	CASE NO:
<i>Plaintiff,</i>	8:03-CV-1189-
	T-26MSS
VS.	
MARINA CLUB OF TAMPA,	<i>Tampa, Florida</i>
Homeowners Association, Inc.,	<i>February 24, 2005</i>
<i>Defendants.</i>	<i>10:00 a.m.</i>

**TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE**

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* * *

[52] of the deal, that's not what I had asked you to do for me.

And that's when - I was - I went to settle the common areas and the lien, but the lien was the main problem, but that if I don't get the lien off, even if I finish the building, I won't be able to sell the building because there's a two, three million dollars lien. I can't get rid of the lien.

THE COURT: Of course, your brother is not here to tell me all that, is he?

THE WITNESS: Yes, sir, no, he is not here.

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THE COURT: When is the last time he was in the United States?

THE WITNESS: '97, '98.

THE COURT: '97, '98 is the last time he was here?

THE WITNESS: Yes, sir, '97, '98.

THE COURT: It's my understanding that it's very difficult for him to return to the United States?

THE WITNESS: Right now, the problem is, if - he had multiple visa that had expired.

THE COURT: I know all that. Let me ask you this. What would he do if I denied this motion and set this for trial on Monday. How would he get here, how would he present his case?

[53] *THE WITNESS:* Well, he may have to go to some other country like Singapore or something where it's easy, but if you send this for a visa, if you send it to Pakistan to get the visa, it's not that simple, sir.

THE COURT: Go ahead, Mr Stanton.

BY MR. STANTON:

Q. Well, the Judge anticipated many of my questions. You indicated that - well, just for clarity, when was it that you realized that you had overstepped your authority?

A. Well, I realized it a couple days later, but at that time, I knew, you know, I messed it up there and I said, you know, I sold the land that was never, you know, I talked to him about it, so then I tried to do something, you know, tried to negotiate it more, tried to see, you know, if I can get

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some better deal with the garage, and they didn't offer it to him because I knew he was going to be annoyed at me for what I done.

Q. Did those negotiations continue?

A. Yes, the negotiations, we tried to see if I can get the garages, you know, put in there, then I can show him we can make a few hundred thousand dollars more with the garages, we'll have more income coming in, and then I can, you know, I can show it to him, that this is what has happened, I messed it up.

* * *

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Case Number: 05-473

OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

MOHAMMED HUSEIN BHADLIA

Petitioner

vs.

MARINA CLUB OF TAMPA,
HOMEOWNER'S ASSOCIATION, INC.,

Respondents

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit
Court of Appeals Number: 05-11292-II

PETITIONER'S REPLY
FOR A WRIT OF CERTIORARI

Mohammed Husein Bhadlia,
Pro se
Karachi, Pakistan
(813)933-7848
Petitioner

PARTIES TO THE PROCEEDINGS

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the United States Court of Appeals for the Eleventh Circuit.

The petitioner here and the appellants below are Mohammed Husein Bhadelia and Mohammed Farooq Bhadelia.

The appellees below and the respondents here are the Marina Club of Tampa Homeowner's Association, Inc.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner states as follows:

Mohammed Husein Bhadelia is an individual and citizen of Karachi, Pakistan. Mohammed Farooq Bhadelia is an individual and citizen of Tampa, Hillsborough County, Florida.

Marina Club of Tampa Homeowner's Association Inc. is a Not for Profit corporation established under Florida Statutes 718, consisting of members permitted under those by-laws of said corporation owning condominium units within the Marina Club of Tampa Condominium Complex.

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CASES CITED:

<u>Baader v. Walker</u> , 153 So.2d 51 (Fla. 2d DCA 1963), cert. denied, 156 So.2d 858 (1963).	6
<u>Bullard v. Fender</u> , 192 So.2d 167 (Fla. 1939)	7
<u>Campbell v. Werner</u> , 232 So.2d 252 (Fla. 3d DCA 1970)	7
<u>Community Federal Savings and Loan Association v. Orman</u> , 446 So.2d 1129 (Fla. 4 th DCA 1984)	6
<u>County of Pinellas v. Clearwater Federal Savings and Loan Association</u> , 214 So.2d 525 (Fla. 2d DCA 1968)	7
<u>Ernest v. Carter</u> , 368 So.2d 428 (Fla. Dist. Ct. App. 2d 1979)	6
<u>Federal Home Loan Mortgage Corp. V. Taylor</u> , 318 So.2d 203 (Fla. 1 st DCA 1985)	6
<u>Julian v. Central Trust Co.</u> , 193 U.S. 93, 113-114	8

<u>Flagship Bank of Orlando v. Bryan,</u> 384 So.2d. 323 (Fla. 5 th DCA 1980)	8
<u>Raskin v. Otten,</u> 273 So.2d 433 (Fla. 3d DCA 1973)	8
<u>Heimer v. Albion Realty & Mortgage, Inc.,</u> 300 So.2d 31 (Fla. 3d DCA 1974)	8
<u>Richardson Tractor Company v. Square Deal Machinery and Supply Co.,</u> 149 So.2d 388 (Fla. 2d DCA 1963)	7
<u>United States v. First Federal Savings and Loan Association of St. Petersburg,</u> 155 So.2d 192 (Fla. 2d DCA 1963)	7
<u>Van Huss v. Prudential Insurance Company of America,</u> 165 So. 896 (Fla. 1936)	6

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STATEMENT OF THE CASE

Respondent has made a misleading description of the litigation history which requires that the Petitioner at this time furnish a more detailed account of the litigation history which involves the parties.

FACTUAL AND PROCEDURAL BACKGROUND

1. Statement of Prior Proceedings

(A.) This litigation between respondent and petitioners began in January of 2002, Marina Club brought suit in the court of Hillsborough County, Florida seeking only an injunction to prevent a "Service Dog" from Marina Club as a violation of the "Pet Weight Limit". At that time the defendants named in that action were Petitioner as the Owner of the condominium unit and Dwayne Gillispie as occupant and owner of the dog. Petitioner was served a summons in that action but did not file a reply.

On March 25, 2002, Gillispie filed a complaint in the United States District Court under the ADA and FHAA in which the state action was the violation complained of.

Petitioners did support and assist Gillispie in the filing of that Federal Complaint. In a meeting with Respondent's Board members, Farooq Bhadelia did voice his support of Gillispie and requested on the behalf of Gillispie that Respondent accommodate the service dog.

In retaliation of that support by Petitioners, the Respondent did on June 7, 2002 amend that state action to include this immediate demand for Petitioner's land.

When Petitioners filed this immediate action in this District Court under the ADA and FHAA, there was held on October 8, 2003 a mediation hearing on that litigation filed by Gillispie. The very next week, in this immediate litigation, Respondent filed a

Counter Claim against both Petitioners with an exact claim as their amended state action without dismissing that previously served action in state court or requesting a proper removal of those claims to Federal Court.

This Counter claim is in direct violation of that Court Order issued August 31, 1991 in that case of RTC v. Riverwalk Investments with attorneys for Marina Club having full and complete prior knowledge that said counter claim would be in violation of a Federal Court Order.

(B) RESOLUTION TRUST CORPORATION

On August 30, 1990, RTC filed its Complaint in an action seeking to foreclose on a mortgage secured by real property situated in Hillsborough County, Florida as receiver under FIRRA.

As shown below, a mortgage proven of record and recorded according to law is presumed validly executed on the date recited in the mortgage. The affidavit of Mr. Brian H. McClelland, RTC's representative, which was filed in that foreclosure action, affirmatively establishes the making, validity, and date of recording of the subject note and mortgage, Riverwalk's default thereunder, and RTC's acceleration of the principal balance of the subject note. As evidenced in Mr. McClelland's affidavit, RTC, as Conservator, was owed by defendant Riverwalk the sum of \$8,875,092.00

2. Statement of Material Facts Relating to RTC

On November 1, 1982, Riverwalk Corporation, a Florida corporation, doing business as a general partner of Riviera Associates, Ltd., a Florida limited partnership and general partner of Riverwalk, Ltd., a Florida limited partnership, made, executed and delivered a Promissory Note (the "Note"), in the principal sum of \$9,200,000.00 and a Multifamily Mortgage, Assignment of Rents, and

(the "Mortgage Agreement"), to City Federal. The Mortgage Agreement was recorded on November 2, 1982, in Official Records Book 4020 at page 125 of the Public Records of Hillsborough County, Florida, and encumbered the real property described therein (the "Encumbered Property"), then owned by and in possession of Riverwalk, Ltd.

On September 23, 1985, the Encumbered Property was conveyed from Riverwalk, Ltd. to Riverwalk Investments, Inc. Pursuant to the Fee Simple Deed executed by Riverwalk Corporation, as general partner of Riviera Associates a general partner of Riverwalk, Ltd., The Encumbered Property was conveyed subject to the Note and Mortgage identified above.

By Order No. 89-460, dated December 7, 1989, the Director of the Office of Thrift Supervision, Department of the Treasury ("OTS"), declared City Federal insolvent and appointed the RTC as Receiver for City Federal. Thereafter, the RTC, as Receiver took possession of City Federal and succeeded to all the rights, titles, powers and privileges of City Federal. On December 8, 1989, the RTC, as Receiver sold, assigned, transferred, conveyed and delivered to City Savings Bank, a newly federally chartered mutual savings association, without recourse, the right, title, and interest of the Receiver in and to certain assets, including the note and mortgage the subject of this action. By OTS Order No. 89-462, dated December 7, 1989, the RTC was appointed as Conservator for City Savings Bank and thereafter took possession and charge of the bank.

By OTS Order No. 90-1763, dated September 21, 1990, the RTC, as Conservator was replaced by the RTC, as Receiver for City Savings Bank, which took possession of City Savings Bank and succeeded to all the rights, titles, powers and privileges of City Savings Bank. On September 21, 1990, the RTC, as Receiver sold, assigned,

transferred, conveyed and delivered to City Savings, a newly federally chartered mutual savings association, all the Receiver's interest in and to certain assets of City Savings Bank, including the note and mortgage the subject of this action. By OTS Order No. 90-1766, dated September 21, 1990, the RTC was appointed as Conservator for City Savings and thereafter took possession and charge of City Savings.

There was due and owing to RTC the sum of \$8,875,092.00 that was due as principal on the Note and Mortgage, together with accrued interest, late charges, title search expenses for ascertaining the necessary parties to this action, attorneys' fees and costs, all as set forth in the affidavits filed with RTC's motion for summary judgment.

3. History of Marina Club

Riverwalk Corporation did on December 19, 1983, record a Declaration of Covenants, Easements, and Restrictions between Riverwalk Corporation (the Developer/Declarant) and those future purchasers of condominium units within the Marina Club of Tampa Condominium (Bldgs. A-I). That recorded declaration was subject to that mortgage and required by that mortgage to be recorded no later than December 31, 1983.

In those documents establishing **Marina Club of Tampa Condominium (Buildings A-I)** was included a proposed development site plan and a provision which permitted the developer to withdraw or add land, buildings, and recreational amenities with a recording of proper documents with the clerk of court.

In that properly recorded Condominium Plat there is described both an actual recording of that land which is the common area for Marina Club of Tampa Condominium (**A-I**) and a proposed site plan indicating the developer's intent on that date to convey additional lands but subject to actual changes in the site plan.

The intent of the developer did change and in 1985 the original Phase Condominium was abandoned and replaced by a Multi-Condominium development plan.

On August 30, 1990 when RTC filed it's complaint for foreclosure, only Marina Club of Tampa Condominium (Buildings A-I) and Marina Club of Tampa Building M Condominium had a recorded Condominium Plat recorded with the Clerk of Court.

Never at any time between November 1, 1982 and August 30, 1990 had any Condominium Plat recording which would designate any lands other than those condominium plats of Marina Club of Tampa Condominium (A-I) and Marina Club of Tampa Building M Condominium been recorded by the developer as required by Florida Statutes and those Documents creating Marina Club of Tampa Condominium.

Never at anytime did Riverwalk Investments record any Declaration of Covenants, Easements, and Restrictions for Marina Club of Tampa Building M Condominium, Marina Club of Tampa Building L Condominium, and Marina Club of Tampa Building K Condominium separate from that Declaration of Marina Club of Tampa Condominium (A-I) and no two condominiums may share the same Declaration of Covenants.

In effect, Marina Club of Tampa Homeowner's Association, Inc. is attempting to circumvent the requirements that each individual condominium within a multi-condominium complex have recorded a separate and distinct Declaration of Covenants, Easements, and Restrictions which specifies in clarity the individual covenants, easements, and restrictions between each individual condominium and the developer.

DISCUSSION AND CITATION OF AUTHORITY RELATING TO RTC FORECLOSURE

The obligation of the mortgagor to pay and the right of the mortgagee to foreclose in accordance with the note and mortgage are absolute. Federal Home Loan Mortgage Corp. V. Taylor, 318 So.2d 203 (Fla. 1st DCA 1985). Community Federal Savings and Loan Association v. Orman, 446 So.2d 1129 (Fla. 4th DCA 1984). As a matter of law, the entire indebtedness secured by the mortgage is due and collectible. Van Huss v. Prudential Insurance Company of America, 165 So. 896 (Fla. 1936); Baader v. Walker, 153 So.2d 51 (Fla. 2d DCA 1963), cert. denied, 156 So.2d 858 (1963).

Riverwalk defaulted under the subject note and mortgage by failing to pay the payments due on September 1, 1984, and all subsequent payments. As a result of the default, as of November 16, 1990, the total outstanding indebtedness due to the RTC, as Conservator, on the subject note was \$8,875,092.00, in principal, plus \$6,215,739.18 in accrued interest.

To establish its entitlement to foreclosure upon the subject mortgage, RTC must show: (1) that a valid mortgage was entered into; (2) that the mortgage is in default; (3) that the debt has been properly accelerated; (4) that the mortgage is prior to all other liens on the premises; and, (5) the amount due and owing. See Ernest v. Carter, 368 So.2d 428 (Fla. Dist. Ct. App. 2d 1979).

A mortgage proven of record and recorded according to the law is presumed to have been validly executed and delivered on the date recited in the mortgage. Atlantic Land and Improvement Company vs. Lee, 112 So. 549 (Fla. 1927).

As a matter of law, RTC was entitled to accelerate the amounts due and owing because of the mortgage being in default. An acceleration clause is a legal, valid, and enforceable stipulation. Campbell v. Werner, 232 So.2d 252 (Fla. 3d DCA 1970), No party has claimed that